

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BART HERRON and OLGA HERRON;
S.H., through his guardian,
OLGA HERRON; and D.H.,
through his guardian OLGA
HERRON

05-CV-659-ST

ORDER

Plaintiffs,

v.

WELLS FARGO FINANCIAL, INC.,

Defendant.

BART E. HERRON
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Lake Oswego, OR 97035
(503) 699-6496

Plaintiff, *Pro Se*, and Attorney for Plaintiffs

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BROWN, Judge.

Magistrate Judge Janice M. Stewart issued Findings and Recommendation (#98) on October 19, 2006, in which she recommended the Court deny Plaintiffs' Motion for Reconsideration of Summary Judgment (#88) and Motion to Reconsider Entry of Default and Default Judgment (#89). Plaintiffs filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v. Bernhardt*, 840 F.2d 1441, 1444 (9th Cir. 1988); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920 (1982). Plaintiffs arranged for the transcription of the record pursuant to Federal Rule of Civil Procedure 72(b), and the Court, therefore, reviewed the transcript of the proceedings before the Magistrate Judge as part of the Court's *de novo* review. *See Spaulding v. Univ. of Wash.*, 686 F.2d 1232, 1235 (9th Cir. 1982).

This Court has carefully considered Plaintiffs' Objections and concludes they do not provide a basis to modify the Findings and Recommendation. Plaintiffs contend the Court committed error

when it adopted Magistrate Judge Stewart's previous Findings and Recommendation (#73) dated May 22, 2006, and incorrectly noted Plaintiffs had not provided the Court with a transcript of the hearing on Defendant's Motion for Summary Judgment even though a transcript was included with Plaintiffs' Objections. In her Findings and Recommendation (#98) dated October 19, 2006, Magistrate Judge Stewart finds the Court's error to be harmless. The Court agrees.

As noted, the Court has now reviewed the transcript of the hearing on Defendant's Motion for Summary Judgment, and the Court adheres to its conclusion that there was not any error in the Findings and Recommendation dated May 22, 2006, in which the Magistrate Judge recommended the Court grant Defendant's Motion for Summary Judgment (#73).

This Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation on the Plaintiffs' Motions for Reconsideration.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Stewart's Findings and Recommendation (#98). Accordingly, the Court **DENIES** Plaintiffs' Motion for Reconsideration of Summary Judgment (#88) and Motion

to Reconsider Entry of Default and Default Judgment (#89).

IT IS SO ORDERED.

DATED this 22nd day of December, 2006.

 /s/ Anna J. Brown
ANNA J. BROWN
United States District Judge